

Restitution FAQ's

“I have been ordered restitution by the court. Why haven't I been paid?”

- The number one answer is because the victim has not kept their mailing address current. Per **A.R.S. § 13-4417(A)**, *“If the victim fails to keep the victim's telephone number and address current, the victim's request for notice is withdrawn. At any time the victim may request notice of subsequent proceedings by filing on a request from provided by the agency the victim's current telephone number and address.”*
- The Clerk of the Court has not loaded the restitution ledger into their system.
- At the time of the pre-sentence investigation (PSI), the PSI writer was unable to contact the victim and/or the victim did not respond to the officer's correspondence and/or to telephone messages. Restitution is left “open”.
- Wrong case number.
- Restitution amount reduced from amount originally ordered.
- Defendant sentenced to Arizona Department of Correction (DOC) but restitution order not loaded into inmate banking system.
- The defendant has not made a payment because he or she is in jail or has absconded.
- The defendant has not made a payment and is delinquent.

“Can restitution be ordered after the defendant is placed on probation?”

- Yes. If the defendant is sentenced to probation, restitution can be ordered but only if there is a stipulation in the plea agreement. Refer to *State v. Contreras* and *State v. Foy* and to case law *FDIC v. Colosi* 194 Ariz. 114, 977 P.2d 836.
- Yes. The court maintains jurisdiction over restitution and modifications can be made while the defendant is on probation. Specifically, § 13-901(C) states in part that the court “may in its discretion . . . modify or add to the conditions [of probation] . . . at any time prior to the expiration or termination of the period of probation.” In addition, § 13-805 states that the court “shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.”

“Can a modification be submitted?”

- Yes. If information is received from a victim, prosecuting attorney, the clerk of the court, or the court, which indicates the original restitution order, should be increased, decreased, updated, or changed in any manner, the probation officer may submit a Petition to Modify Probation to the court after receiving authorization of the Division Director.

“Is court ordered restitution dischargeable if the probationer files bankruptcy?”

- No. A.R.S. § 13-603(C) states, “Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim and is a criminal penalty for the purposes of a federal bankruptcy involving the person convicted of an offense.”

“Can the probationer and victim settle and /or negotiate the amount of restitution ordered by the court?”

- Yes, but both parties must be willing to settle and/or negotiate and amount of restitution ordered. A Modification to amend the original order would have to be requested and ruled upon by the court.

“Can the victim still collect restitution if the defendant died?”

- Yes. The victim is required to present their claims within four months after receipt of the Notice to Creditors the defendant has died or the claims will be forever barred. Complete a Claim

against the Estate form and file the original with the Probate Registrar. This form and instructions for filling out this form can be found at:

www.superiorcourt.maricopa.gov/ssc/forms/prob_pbip3.asp Click on form pbip32f.

“What happens if the victim dies and restitution is still outstanding?”

- A.R.S. § 13-603(C) states, “If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or *to the immediate family of the victim if the victim has died*, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court’s designee pursuant to Chapter 8 of this Title.”

“What if the victim incurs future expenses as a result of the crime?”

- Restitution is allowed for future medical and counseling expenses. Refer to *State v. Howard*

“What is JSL and who is a JSL defendant?”

- JSL stands for **J**ointly and **S**everally **L**iable. A.R.S. § 13-804(F) states, “If more than one defendant is convicted of the offense which caused the loss, the defendants are jointly and severally liable for the restitution.”

“If at sentencing, the defendant is committed to the Arizona Department of Corrections (DOC), is the defendant still responsible for paying restitution to the victim?”

- Yes. If a court has ordered the defendant to pay restitution pursuant to A.R.S. § 13-603, payment shall be thirty percent (30%) of the defendant’s earnings while incarcerated.

“Are there any consequences to the defendant for non-payment of restitution?”

- Yes. A.R.S. § 13-810(A) states, “If a defendant . . . defaults in the payment of restitution . . . the clerk of the court . . . shall notify . . . any person entitled to restitution pursuant to a court order. The court . . . shall require the defendant to show cause why the defendant’s default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant’s appearance.”
- A.R.S. § 13-810(B) states, “If a defendant has willfully failed to pay restitution or has intentionally refused to make a good faith effort to obtain the monies required for payment, the court shall find the default constitutes contempt and may do one of the following:
 1. Order the defendant incarcerated in the county jail until the restitution or a specified part of the restitution is paid.
 2. Revoke defendant’s probation and sentence the defendant to prison pursuant to law.
 3. The court may issue a writ of criminal garnishment pursuant to A.R.S. § 13-812.

“What if the defendant is released from probation or DOC and restitution is still owed?”

- As stated in A.R.S. § 13-805(A)(2), “At the time the defendant completes the period of probation or the sentence the court shall enter . . . a criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered. (C) A criminal restitution order may be recorded and enforced as any civil judgment, except that a criminal restitution order does not require renewal. A criminal restitution order does not expire until paid in full. (D) A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

“What is a restitution lien and who can file one?”

- A restitution lien is any official claim or charge against property or funds for payment of a debt. “It is perfected against interests in personal property by filing the lien with the Secretary of State.

In the case of titled motor vehicles it shall be filed with the Department of Transportation Motor Vehicle Division. In the case of real property it shall be filed with the County Recorder of the county in which the real property is located.” A.R.S. § 13-806(D)

- Any person entitled to restitution pursuant to a court order may file a restitution lien. A filing fee or any other charge is not required for filing a restitution lien. A.R.S. § 13-806(A).

“If restitution is ordered, can the victim still file a civil lawsuit against the defendant?”

- Yes. The law allows a civil judgment for the same amount that is covered by a criminal restitution order and vice versa. However, the law does not allow the victim to *collect* on both. An advantage of a civil judgment is that collection proceedings can begin immediately.